F.-71 (6)—6,006—30-1-45.

Department of Land Rev

OFFICE Board of Revenue

STATION Madras

Rc. No. 606

Dated 18.6.43

DEPARTMENTAL

18 JUN 1943

To-day

Pages in the file.

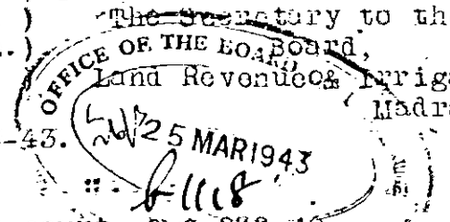
SUBJECT.

Mangalore R-M's Court. G.S. 232/
S.K) - Mangalore Tk & Town - Attavo
R.S. 207 - road Permanbore - clar
ownership - V. B. Fernandez and
Govt. Ltr. - Draft written slatt

To

M. Karamatullah, Esq., I.C.S.,
Collector of South Kanara.

The Secretary to the Board,
Land Revenue & Irriga
Madra



Ref.A3.9022-42 dated 20-3-43.

Sir,

Suits - Mangalore Dt.Munsif's court - O.S.232-40 - encroachment - Mangalore Town - T.S.No.207 - eviction - sanction of defence - requested.

Copies of the plaint and the written statement of the defendant Municipality in the suit cited above are enclosed. Th suit has been filed against the Municipality of Mangalore Town for a declaration that the strip of land marked B.P.C. in the plan attached to the plaint belongs to the plaintiffs on mulgeni right and for a perpetual injunction restraining the defendant Municipality from entering on any portion of the said strip of land and also for other consequential reliefs.

2. The facts of the case, are given below: T.S.No.207 of Attavar village of Mangalore Town stands registered as road poramboke which is vested in the Mangalore Municipality. The plaintiffs have encroached upon a portion of this plot, marked 207 A in the sketch enclosed, by constructing a compound wall alo the eastern boundary of T.S.No.200, which is in their enjoyment o mulgeni right. The Municipality, having found the encroachment to be objectionable, instituted eviction proceedings under the provisions of the Madras Dt. Municipalities Act, and, issued a notice under section 182 of the Act. Hence the present suit.

3. After having filed its written statement the Municipali put in a petition before the court praying that the Province of Madras might be impleaded as a supplemental defendant in the su This was done by the Municipality under the instructions in G.O. No.1550 L.A., dated 6-5-41, with a view to get a longer period of limitation as against Government. Though the Government Pleade Mangalore, formally protested against the impleading of the Government on the ground that no notice under section 80 C.P.C. was received by them the court has allowed the petition of the Municipaluty.

4. The Tahsildar, Mangalore, who inspected the encroachment reports that the written statement filed by the defendant Municipality in reply to the averments contained in the plaint is correct. I consulted the Government Pleader, Mangalore, on th maintainability of the suit. A copy of his reply No.A.162-43 dated 16-3-43 is enclosed. He has agreed that it is sufficient the Government to adopt the written statement filed by the Municipality, so far as the facts of the case are concerned. He i of opinion that the contention of the Government that no notice under section 80 C.P.C. was issued by the plaintiffs will not be sustainable, as it is not the plaintiffs, but the Municipality, that got the Government impleaded as a defendant, for its own benefit; but he has advised that the Municipality should file ar additional written statement raising the plea of non-issue of notice under section 350-(1) of the Madras Dt.Municipalities Act I am instructing the Municipality accordingly.

5. I, therefore, recommend that the defence by the Government may be sanctioned. The draft written statemen proposed to be filed by the Government (copy enclosed) was prepared in my office and scrutinized by the Government Pleader, Mangalore. It may be approved.

6. Under G.C.No. 105 Rev. dated 23-1-30, communicated with B.P.Mis.No.3394, dated 15-11-30, the cost of defending the suit has to be apportioned between the Government and the Municipali in the proportion of 1 : 2, if the Municipality accepts the legal representative appointed by the Collector. The Municipali has expressed willingness to accept the legal representative appointed by the Government but the Government Pleader is of opinion that as the Vakil for the Municipality has already beer on record, it might be better that he continues to appear for

Pakeerasy.

the Municipality and the Government Pleader appears only for the Government. I agree with him and shall give instructions accordingly after the Board sanctions the defence of the suit.

7. The Government were impleaded in the suit on 25-1-43. Though the suit was posted to 5-2-43 for filing the written statement of the Government the Government Pleader has obtain time till 5-4-43. I, therefore, request the favour of Board's urgent orders in the matter.

For Collector.

23.3.43

Letter-from the Government Pleader & Public Prosecutor, Mangalore.
To-the Collector of South Kanara, Mangalore.
Dated-Mangalore, 16.3.1943
No.-Ref.No.A-162-43.

******

Suits Mangalore District Munsif's Court - O.S.232/42 - legal opinion.

Your Ref.A3-9022-42. dated 13.3.1943.

*****

1. The suit is maintainable. The draft written statement is returned herewith with a slight alteration deleting the defence under Section 80 C.P.C. It may be recalled that it is not the Plaintiff but the Municipality that got the Government impleaded as a party, for its own benefit. The Government finally consented to its being made a party to help the Municipality. The Plaintiff did not implead the Government in the suit. And he cannot now be non-suited for want of notice under Section 80 when he never wanted the Government as a party.

2. I agree the Municipality should take the plea of non-issue of notice under Section 350(1) in an additional written statemen

3. As the Vakil for the Municipality has already been on record, it may be best that he continue to appear for the Municipality, and I appear only for the Government

All the enclosures are returned herewith.

*****

/True Copy/

5/5

For Collector.

5

In the Court of the District Munsif of Mangalore.
O.S.No.232 of 1942

Between:-
1. U.B. Fernandes
2. R.A. Fernandes ... Plaintiffs
and
The Mangalore Municipality by its Executive Authority, the Commissioner. ... Defendant.

Plaint under Section 26 Schedule I Order VII Rule 1 of Act V of 1908.

The Plaintiffs abovenamed beg to state as follows:-

1. That the Plaintiffs are the sons of H.C. Fernandes, Roman Catholic Christians, Merchants, aged about 24 and 23 years respectively, residing at Pandeshwar, Mangalore Town. The address for service of all process and notices is as stated above

2. That the Defendant is the Mangalore Municipality having its office in Mangalore Town and the suit summons may be served on its Executive Officer, the Commissioner at the Municipal Office Mangalore Town.

3. (1) That the plot marked ABCDEFGHIJKLMN, pertaining to T.S.No.200, R.S.No.329 of Attavar village, Mangalore Town and detailed in Schedule A herebelow and hereinafter called the said plot belongs absolutely to the Plaintiffs on mulgeni right they having purchased the same under a registered sale deed dated the 10th May 1941 and have been in possession and enjoyment of the same.

(2) One of the title deed handed over to the Plaintiffs pertaining to the said plot and dated the 6th November 1875 is a registered sale deed executed by Leopas Fernandes in favour of John Francis Fernandes. The same is herewith produced and may be read as a part of this plaint.

(3) It would appear from the said document dated the 6th November 1875 that the said plot described in Schedule A herebelow was obtained by one Custodius Fernandes on Mulgeni long prior to 1865 and since then was in the possession and enjoyment at first of the said Custodius Fernandes and after his death of his sons and under the sale deed dated the 6th November 1875 it came to the possession and enjoyment of John Francis Fernandes one of the sons of the said Custodius Fernandes and after his death under his will it came to the possession and enjoyment of his son Joseph Antony Benedict Fernandes and Gregory Fernandes and under the sale deed executed by Gregory Fernandes and Allen Percival Fernandes, son of Joseph Antony Benedict Fernandes and Magdelina Nathalia alias Lena Fernandes widow of Joseph Antony Benedict Fernandes, it has come to the possession and enjoyment of the Plaintiffs.

(4) The said plot for the past more than 80 years has for its eastern boundary the public road as shown in the accompanying plan

(5) The physical features of the Eastern-most strip of the said plot clearly indicates and establish beyond any doubt that it formed portion of a hill slope from which the public road on its eastern side was cut out and therefore the entire eastern edge of the plot was not a wall built by human agency but formed the remanar of the hill slope which at one time extended from the present Travellers' Bungalow compound situated on the opposite side of the Plaintiff's aforesaid plot to the east of the public road shown in t plan.

(6) Survey stones S.1 and S.2 fixed along the eastern edge of the said plot and which still exist in their respective places for the last several years also indicate that there has been no encroachment of any portion of the public road lying to the east of the afor said plot. Survey Stone S.2 has been fixed and embeded on the ancient foundation of the ancient wall referred to in the sale deed dated the 6th November 1875 at the South Eastern corner of the said plot.

(7) The Plaintiffs were served with a notice by the ---- Defendant under Section 182(1) of the Madras District Municipalities Act of 1920, dated the 4th December 1941 alleging that it had been reported to it that a portion of the poramboke land T.S.No.207 of 20th ward has been encroached by the Plaintiffs by means of constructing a compound wall measuring about 372 Sq.ft. and that the encroachment is unauthorised and objectionable and asked the Plaintiffs to remove the same.

(8) The Plaintiffs deny that they built or constructed any wall along their eastern edge of their plot pertaining to T.S.No. 200 of Attavar village at any time as is alleged in the notice or that they have encroached upon any portion of the poramboke road at any time.

(9) They submit that the entire plot described in the aforesaid registered sale deed dated the 6th November 1875 and purchased by the Plaintiffs up to the very edge touching the public road has been continuously and openly in the possession and enjoyments of the Plaintiffs and their predecessors in interest for more than 80 years up till now in their own right.

(10) These Plaintiffs deny that the narrow strip marked BPC in the accompanying plan now alleged by the Mangalore Municipality the defendant, as an encroachment ever belonged to it at any time or was in its possession or enjoyment at any time within the past 80 years or that it has any right, title or interest therein.

(11) Under any circumstances the Defendant's title if any to the said plot has long been barred by limitation and adverse possession on the part of the Plaintiffs and their predecessors in interest

(12) The Plaintiffs submit that there were two trees more than 80 years old on the said strip BPC viz., one mango tree and another cocoanut tree near the spots marked t and t-1 in the plaint plan. It would appear that the cocoanut tree was cut few years ago and the mango tree was cut in 1941 by the Plaintiffs

(13) Further the Defendant Municipality had even constructed the road drain marked rd in the plan built of laterite stones just close to the Plaintiffs' said plot along its eastern side right.

(14) The Plaintiffs submit that inspite of their claims and protests submitted to the Defendant Municipality regarding the aforesaid notice, it appears to have ordered the immediate removal of the strip by its resolution No.59 dated the 8th June 1942.

(15) A copy of the orders passed by the Defendant in its Council and communicated to the Plaintiffs on 18th June 1942 states that the alleged encroachment should be removed within 3 days of else it will be got removed departmentally on or after 26th June 1942 and the Defendant had authorised the P.W. Supervisor to remove it on or after 26th June 1942. The said copy of the Defendant's Order is produced herewith.

(16) The Plaintiffs submit that the Defendant has no right whatsoever to demolish and remove the strip BPC and deprive the Plaintiffs of the same and in case the Defendant's threatened removal of the strip is carried out the Plaintiffs will not only be deprived of a portion of their plot but will be put to great loss and hardship and irreparable injury will be caused to the said property. Further the Defendant Municipality is estopped from laying any claim to the strip BPC on contending that it is an encroachment of the Plaintiffs.

(17) The Plaintiffs therefore submit that the Defendant its subordinates, servants, contractors and others should be

restrained by a permanent injunction from entering on any portion of the so called encroachment referred to in its notice, dated the 4th September 1941 and order dated the 16th June 1942 or taking or using or removing any portion of the said piece of land BPC.

IV. Under these circumstances the Plaintiffs are constrained to file this suit for necessary reliefs the cause of action for which arose since 4th September 1941 when for the first time the Defendant asserted and put forward a claim to the strip since 8th June 1942 the date of its resolution and also since 18th June 1942 when it was communicated to the Plaintiffs in Mangalore Town where the plaint plot is situated and within the jurisdiction of this Court.

V. That the Plaintiffs estimate the value of the reliefs sought for at Rs.150/- for court fees as also for jurisdiction. A Court fee of Rs.16.13.0 is paid under Section 7 clause IV(C) Schedule I, Article 1 of the Court Fees Act (Madras) the value being not less than 1/2 the value of the plaint strip in dispute calculated under clause V of Section 7.

VI. The Plaintiffs therefore pray for a decree and judgment against the Defendant for the following reliefs:-

a) For a declaration that the strip of land marked BPC in the plan attached to this plaint and of the area of about 372 Sq.ft. and referred to in the notice dated the 4th September 1941 and order dated the 16th June 1942 belongs to the Plaintiffs on Mulgeni right and the Defendant has no manner of right title or interest therein and for a ----- perpetual injunction restraining the Defendant its agents, subordinates, servants, contractors and others from entering on any portion of the said strip of land or taking or using or removing or interfering with any portion of the said piece of land. This relief is valued at Rs.150/- under Section 7 Clause IV(C) of the Court Fees Act (Madras) being not less than the value of the said strip calculated under clause V of Section 7 of the Court Fees Act. The area of the whole plot ABCDEFGHIJKLMN is 92 cents or 40,075 Sq.ft. and its assessment Rs.6.12.0 and plaint strip being 372 Sq.ft. in extent the proportionate assessment thereon is not more than Re.0.1.3 and 10 times Re.0.1.3 is Re.0.12.6 ..... Rs.150/-.

b) Directing the Defendants to pay Plaintiffs costs of this suit with interest thereon till payment.

c) Directing the Defendant to pay Plaintiffs for such other and further reliefs as this Court may deem fit to grant.

Schedule A.-
Description of the Plaintiffs property.

× × ×

List of documents.

S.No.	Date	Description.
1	6.11.1875.	Registered sale deed executed by Leopas Fernandes in favour of John Francis Fernandes.
2	4.9.1941	Notice issued to the Plaintiffs by the Defendant.
3	16.6.1942.	Order of the Defendant.
4		Photograph of suit locality.

Mangalore, 20.6.1942.

Sd/- M. Anantha Shastry,
Pleader for the Plaintiffs.

/True Copy/

Sd/ xx xx xx
Commissioner
18.1.1943.

'True Copy/

-1-

40
23.3.43

In the Court of the District Munsif of Mangalore.
O.S.No.202 of 1944.

Between:

1. U. . Fernandes)
2. R.A. Fernandes) Plaintiffs.

&

The Mangalore Municipality by its Executive Authority the Commissioner) Defendant.

Written statement of defendant under Order VIII Rule 1 of the C.P. Code.

1. The defendant's address for service is as stated in the plaint.

2. The defendant admits that Plaintiffs are the present owners on Mundkani right of T.S.No.200 R.S.No. 325 of Attavar Village, Mangalore Town but deny that the same has been correctly detailed in schedule A to the plaint or correctly delineated in the plan annexed to it. The defendant denies that the Plaintiffs have title to the strip of land marked B P C in the plan or that the said strip of land is included in their T.S. No.200 R.S.No. 325 aforesaid. The defendant admits the Plaintiffs title to the remaining area marked in the sketch as A B P E F G H J K L M & N and the genuineness of their document of title, which however do not take in the aforementioned strip of land B P C, which belongs to the defendant. The said documents do not affect the defendant's title to the said strip of land nor are the same binding on defendant.

3. The defendant admits that the site of the public road was cut out of a hill which had its slope from East to west and the slope continued in the Plaintiff's land in the same direction. In making the road the strip marked B P C was retained by the defendant as road margin.

4. The defendant admits the correctness of the survey stone at S & S 1 but not of the stone at S 2 as it stands at present. The correct position of the last mentioned survey stone is at the point marked P in the plan 6 feet from the point S 2. The stone at S 2 is not embedded in the foundation of the ancient wall mentioned in the sale deed dated the 6th November 1875. The defendant does not admit that the portion of the wall between the points P & C is ancient. The said portion is also an encroachment and has to be removed by the owner of T.S.No. 197 lying to the south of Plaintiff's T.S. No.200, who has already removed the encroachment which lay immediately to the south of the said portion of the wall between the points P & C under orders of the defendant.

5. The defendant admits having sent the notice under section 152 (1) of the Madras District Municipalities Act referred to in Paragraph III (7) of the plaint. With reference to the allegation in para III (8) of the plaint, the defendant submits that the encroachment whether it be formed by putting up a compound wall or by excavating earth from its natural position so as to leave a column of it to form a compound wall is an encroachment and the same are both unauthorised and objectionable.

6. The defendant denies that the Plaintiffs or their predecessors in title had possession and enjoyment of the strip of land in question for more than 50 years until now or for any period of time. The said piece of land is vacant land and its possession was with the defendant who alone has title to it. The allegations in para III (1) of the plaint to the contrary are not true and are denied.

District - South Kanara

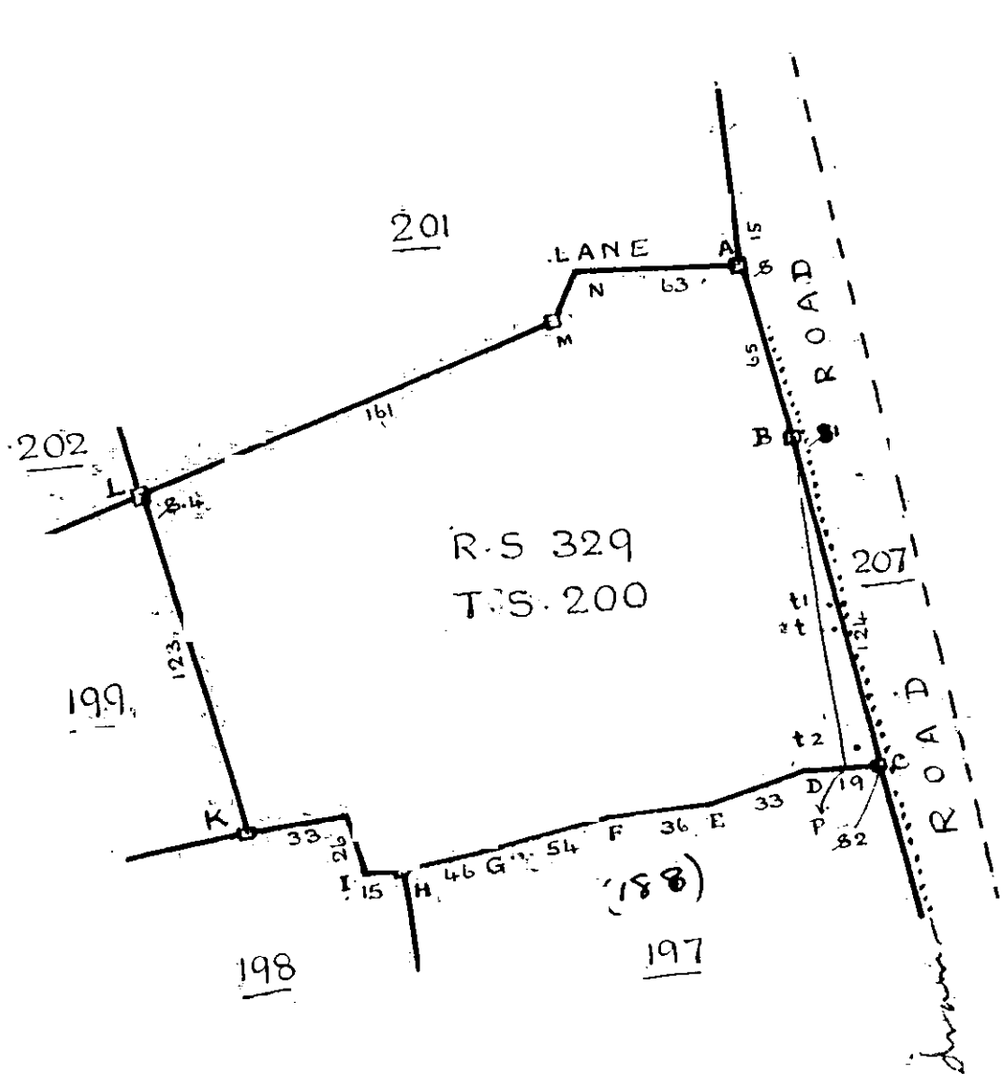
Taluk - Mangalore

9

Village { No. 86 / Name Attavar

Survey no. 329

J. S No. 200



Scale 1 inch = 66 feet

In the court of the District Munsif
Of Mangalore

Original suit no. of 1942

Between :-

1 U. B. Fernandes
2 R. A. Fernandes } Plaintiffs

and

The Mangalore Municipality by its executive authority, the Commissioner } Defts

True copy prepared by,

Sd xxx

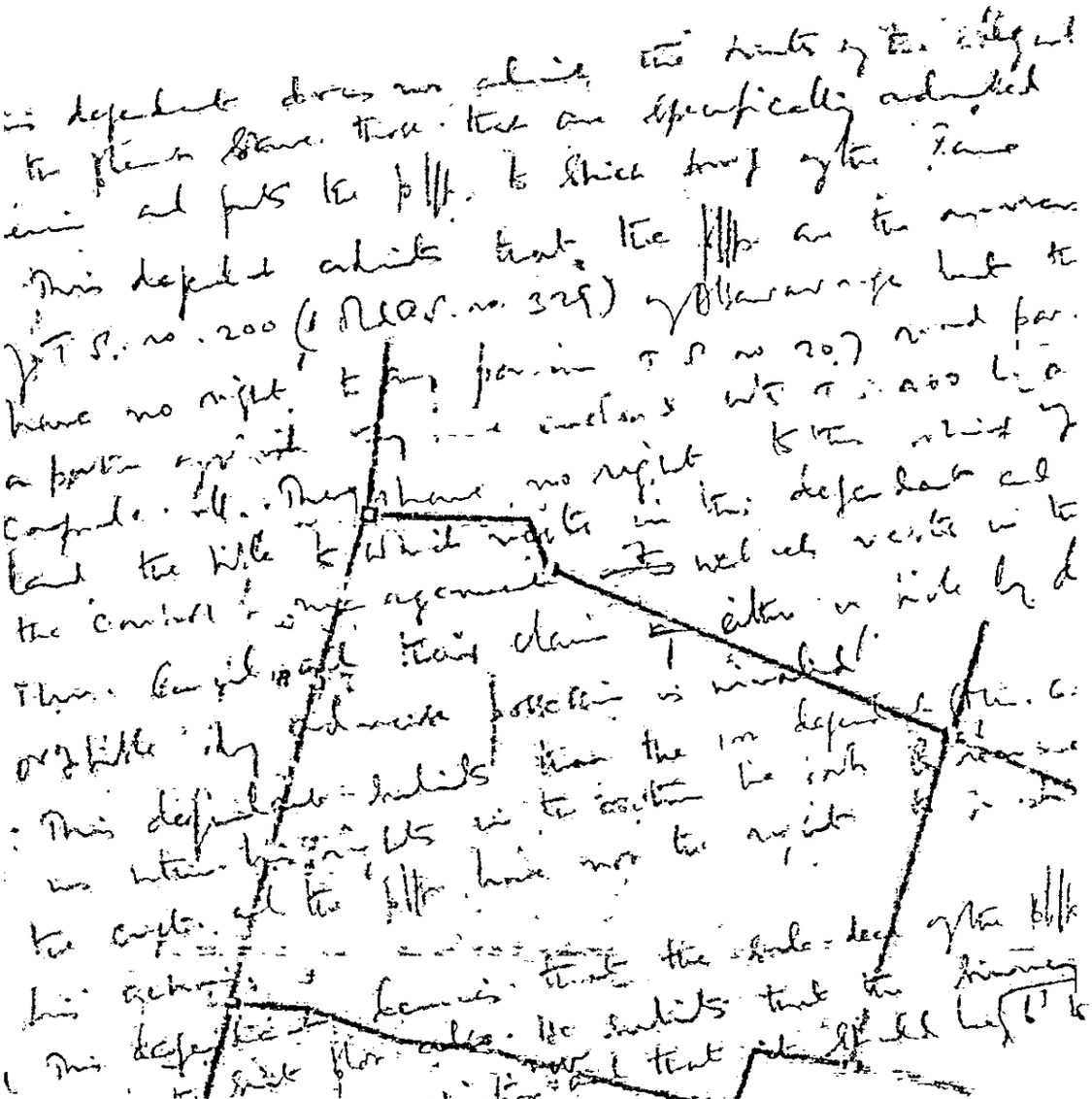
Town Surveyor
S. 3. 63

Produced by the plaintiffs on 20. 6. 42

Sd xxx
Plaintiff.

Sd xxx
Pleader for the Plff

Copied by H R Rangappa
22. 3. 43 Draftsman



7. It is denied that Plaintiffs or their predecessors-in-title were in adverse possession of the said plot of land at any time or that they have acquired a title. It is denied that defendant's title to it is barred by limitation or adverse possession.

8. The allegations in para III (12) of the plaint that there were two ancient trees more than 80 years old on the said strip of land B P C one mango tree marked t and another cocoanut tree at t/in the plan is not true. The trees, if any, were in Plaintiffs' land to the west of the strip marked B P C and only some of their roots had penetrated in the plot B P C as may be seen in the eastern side of the recent cuttings made by the plaintiffs. The existence and the cutting of the trees if true does not amount to possession and enjoyment of the strip of land B P C. or affect the defendant's ownership and possession of the said strip of land.

9. With reference to the allegation in para III (15) of the plaint the defendant submits that the construction of the road drain by the side of the strip of land aforesaid is not a circumstance adversely affecting defendant's title and possession of the suit land.

10. The defendant admits having ordered the removal of the encroachment by resolution No.55 dated the 8th June 1942 and the said resolution and order are within the rights and powers of the defendant. It is denied that the removal of the encroachment will amount to a legal injury to the Plaintiffs or will put them to loss, hardship and irreparable injury as alleged in para III (16) of the plaint. It is also denied that the defendant has done anything to the prejudice of the Plaintiffs so as to estop the defendant from passing the aforesaid resolution and from carrying it into effect.

11. The Plaintiffs have no cause of action against the defendant.

12. All allegations in the plaint not admitted or traversed herein are denied.

13. The Plaintiffs are not entitled to the declaration and injunction claimed or any other reliefs claimed.

It is therefore prayed that the Plaintiffs suit may be dismissed with costs.

(True copy)

45

for Collector

23.3.43

13

In the Court of the District Munsif of Mangalore.
O.S.No.232 of 1942.

Between:-
1. U.B. Fernandes. | Plaintiffs.
2. R.A. Fernandes. |
and
1. The Mangalore Municipality by its Executive authority the Commissioner. | Defendants.
2. The Province of Madras represented by the Collector of South Kanara (supplemental). |

Written statement filed by the second defendant under order VIII Rule 1 C.P.C.

The second defendant abovenamed begs to state as follows:

The suit is not maintainable in law as no notice under Section 350(1) of the Madras District Municipalities Act, 1920, was served on the first defendant.

2. This defendant adopts the written statement filed by the first defendant regarding the facts of the case and prays that the suit may be dismissed with the costs of this defendant.

South Kanara Collector's Office, | 215
Mangalore, 20th March 1943. | For Collector.

W2/23.3.43

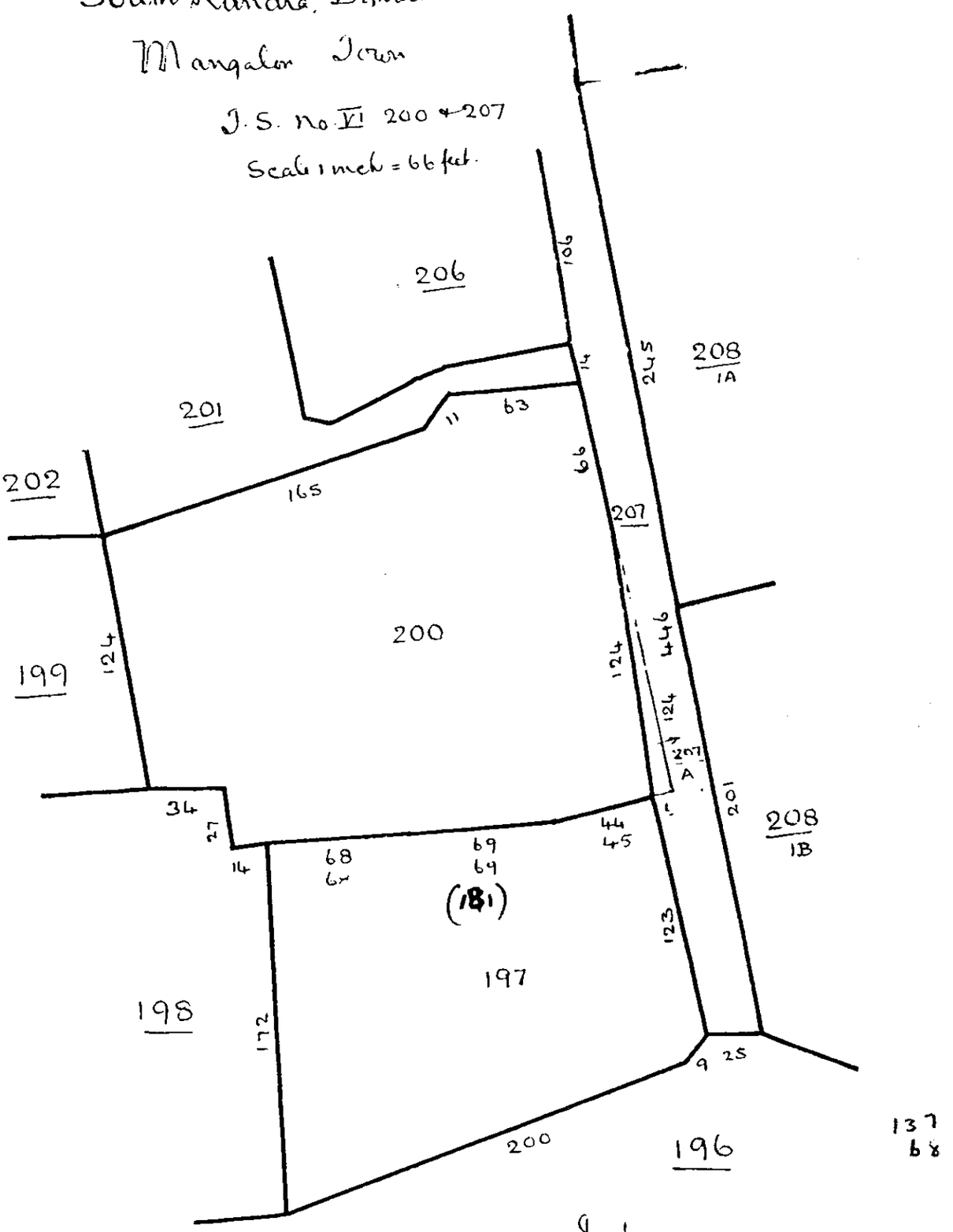
15

South Kanara District.

Mangalore Town

T.S. No. VI 200 & 207

Scale 1 inch = 66 feet.



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208-1B	Abkari Bungalow.
201	Patta land of E. K. K. Keyi.

Sd/ Prepared by
XXX
Town Surveyor

Copied by
J. T. Rayappa
Draftsman
2.3.4

Draft dt 1/4

Mr. J W.S & G.W.P 17

Suits - original (S Kanana) - Ilangal D 12; Civil - G S 232/40 - suit - land Mangalore Dn + Tam - D Itavan nger - T no 207 - road per + claim - of private and shop - V os Fernandez + another, p/lib - dispo sanctioned

Issue Today 2/3/4 pp 1m LF L 1118/43 Civil of S Kanana H3 9.2.44/un d 20 3 43 Q

Ref no L-1118/43 - 1 d. 3-4-43

The Bd. sanctions the defence of the suit. ~~and As the d.w.s enclosed to the~~ of this letter is inadequate, a w.s has been prepared + enclosed.

Here enclosed w.s at pp 3+4 N.F hereof.

~~The letter is requested to file it in Court.~~

~~As regards the w.s~~, A draft w.s prepared in the Bds. Office is enclosed. The Bd observe that in the sketch enclosed to the plaint the measurement of the southern side of the fields

Item 18

R S 324 is given as 188 ~~links~~ as against 1811 ~~links~~ only in the Sketch sent by the E/Mr. Dr the whole question hinges upon this measurement, this must be reconciled and the facts made clear. The E/Mr is requested to have the matter investigated and to submit a report before the Bd can sanction the W. S. The Bd consider it likely ~~proves~~ that in Mangalore Taluk ~~it exists~~ the measurements according to the Taluk Survey ~~that~~ differ from those in the Assessment. The E/Mr is requested to expedite the enquiry and obtain the necessary adjustments and also keep this Bd informed of the progress.

2. The E/Mr is also requested to have the d. w s. enclosed countersigned by the local S. P.

RG 3/4

Cn
2/4/43 3/4.

To The E/Mr. of South Kanara with ~~copy~~ a copy of W. S. [illegible] N.F. [illegible]

19

From
M. Karamatullah Esq., I.C.S.,
Collector of South Kanara.

To
The Secretary, Board of Revenue,
Land Revenue & Irrigation, Madras.

Ref.No.A-6/2222-42 dated 2nd June 1943.

Sir,

SUBJ - Mangalore Dt.Munsiff's Court - O.S.No.2327 of 42 - Filing of written statement - Interim report - Submitted.

Reference: Board's Ref.No.B.11F8-43-1 dated 3-4-1943.

The suit cited above stands posted to 5-6-1943 for filing the written statement of the Government. As the report of the Tasildar regarding the enquiry ordered by the Board in its reference cited above is incomplete, I am asking the Tahsildar to make further enquiry and the Government Pleader, Mangalore, to obtain another adjournment in the case. The final report will be submitted as soon as the Tahsildar's further report is received.

for Collector.

21

VERY URGENT.

From
M. Karamatullah Esq., I.C.S.
Collector of South Kanara.

To
The Secretary to the Board of Revenue,
Land Revenue & Irrigation, Madras.

14 JUN 94
MADRAS

Ref. No. A-3/9022-42 dated 12-6-1943.

S i r,

SUITS - Mangalore Dt. Munsiff's Court - O.S.No.232/42 - Encroachment - Mangalore Town - T.S.No.207 - Eviction - Further report submitted.

Reference: (1) Board's Ref. No. b.1118-43-1 dated 3rd April 1943; and
(2) this office Ref. A-3/9022-42 dated 2-6-1943.

Enquiry shows that the measurement of the southern side of the field R.S.No.329 according to the old survey does not differ from that according the Town survey, and that the sketch produced by the plaintiff is only in cordance with the actual state on the ground. A copy of the sketch of the said field according to the old survey is enclosed. The measurements give therein are in links. The Mangalore Town was not re-surveyed. The draft written statement received from the Board has been scrutinised by the Govement Pleader, Mangalore, a copy of whose opinion Ref. A-225-43 dated 22-4-1 is enclosed.

2. The suit stands posted to 12-6-1943. As it was reported that t Court is unwilling to grant further adjournment, I have sent to the Govern ment pleader a written statement duly signed and verified by me with instr -tions to file it in Court on 12-6-1943 provisionally as required by S.S.C

P.T.O

93.4-(iii) in case the Court refuses to grant further adjournment. The draft written statement received from the Board and a copy of the written statement sent to the Government pleader are enclosed. I request that the Board may be pleased to approve the written statement and to communicate the orders to me very urgently.

For Collector.

Copy of letter Ref.No.A.225/43 dated 22-4-43 from the Government Pleader, Mangalore to the Collector of South Kanara.

SUITS - Mangalore Pt.Munsiff's Court,- O.S.No.232/42 - Your Ref.A-3/9022-43 dated 7th April 1943.

I have scrutinised the draft written statement and it is sent herewith. But I am not at all hopeful of the efficacy of the contention under Sec.80 CPC as the Government have been impleaded on consent at the instance of the Municipality.

The suit is posted for filing written statement to 5-6-1943.

In the Court of the District Munsiff of Mangalore.

O.S.No.232 of 1942.

Between:-

1. U.B. Fernandes.
2. R.A. Fernandes. | Plaintiffs.

and

1. The Mangalore Municipality by its Executive Authority the Commissioner.
2. The Province of Madras represented by the Collector of South Kanara (Supplemental). | Defendants.

Written statement filed by the second Defendant under Order VIII Rule 1 C.P.C.

The second Defendant abovenamed begs to state as follows:-

1. This Defendant does not admit the truth of the allegations in the plaint save those that are specifically admitted herein and puts the plaintiffs to strict proof of the same.

2. The sketch attached to the plaint is incorrect; a correct sketch is filed herewith.

3. This Defendant admits that the plaintiffs are the owners of T.S.No.200 (old S.No.329) of Attavar village but contends that they have no right to any portion of the suit site in T.S.No.207, road poramboke which they have enclosed with T.S.No.200 by a compound wall. They have no right to the strip of land the title to which vests in this Defendant and the control and management of which vests in the first Defendant, the Municipal Council. The Plaintiff's claim of title either by document or by adverse possession is invalid.

4. This Defendant submits that the first Defendant, Municipal Council, was within its rights in the action it took to remove the ——— encroachment and the Plaintiffs have no right to question its action.

5. This Defendant denies that the sale-deed of the plaintiffs covers the suit plot also. He submits that the survey stone 82 is now out of position and that it should be moved to its correct position which is 6' to the west of its present position.

6. This Defendant submits that at town survey the suit site has been measured with T.S.No.207 which is road poramboke and this is conclusive proof that at the time of survey it did not form part of any private property.

7. This Defendant denies that the trees referred to in para III (12) of the plaint were on the suit site. They were on plaintiffs land to the west of the suit site.

8. The suit is not maintainable as the Plaintiffs have not given this Defendant any notice of suit as required by Section 80 C.P.C.

9. The Plaintiffs have no cause of action as against this Defendant.

10. The Plaintiffs are not entitled to the declaration or the injunction prayed for.

11. This Defendant therefore prays that the suit as against him may be dismissed with costs.

South Kanara Collector's Office,
Mangalore, dated - 6 -1943. | (sd) M. Karamatullah,
Collector.

I, M. Karamatullah, Esq., I.C.S., Collector of South Kanara, do hereby declare that the facts stated above are true to the best of my knowledge and belief.

South Kanara Collector's Office,
Mangalore, dated - 6 -1943. | (sd) M. Karamatullah,
Collector.

(True Copy)

Draft Written Statement.

---

(1) This defendant does not admit the truth of the allegations in the plaint save those that are especially admitted herein and put the Plaintiffs to strict proof of the same.

(A) The sketch attached to the plaint is incorrect; a correct sketch is filed herewith.

(2) This defendant admits that the plaintiffs are the owners of T.S.No.200 (old S.No.329) of Attavar village limit contends that they have no right to any portion of the suit site in T.S.No.207, road portion which they have enclosed with T.S.No. 200 by a compound wall. They have no right to the strip of land the title to which vests in this defendant and the control and management of which vests in the first defendant, the Municipal Council. The plaintiff's claim of title either by document or by adverse possession is invalid.

(3) This defendant submits that the first defendant, Municipal Council was within its rights in the action it took to remove the encroachment and the plaintiffs have no right to question its actions.

(4) This defendant denies that the sale-deed of the plaintiffs cove the suit plot also. He submits that the survey stone S2 is now out of position and that it should be moved to its correct position which is 6' to the west of its present position.

(5) This defendant submits that at town survey the suit site has been measured with T.S.No.207 which is road portion and this is conclusive proof that at the time of survey it did not form part of any private property.

(6) This defendant denies that the trees referred to in para III (12) of the plaint were on the suit site. They were on plaintiffs' land to the west of the suit site.

(7) The suit is not maintainable as the plaintiffs have not given this defendant any notice of suit as required by Sec.80 C.p.c.

(8) The plaintiffs have no cause of action as against this defendant.

(9) The plaintiffs are not entitled to the declaration or the injunction prayed for.

(10) This defendant therefore prayes that the suit as against him may be dismissed with costs.

[All the paras in the written statement above excepting para 7 need no explanation as they have all been based on the authority of the written statement of the Municipal Council. The Government Pleader's opinion as regards the absence of notice under Section 80 Criminal Procedure Code does not seem to be correct as the notice is mandatory. Many Courts have granted the plaintiffs in the suits before the time to give notice to the Government before impleading them. This is a plea that must be taken and hence it has been put in.]

Government of Madras

PUBLIC (SERVICES) DEPARTMENT

G.O. No. 1101, 19th June 1936

Public Services—Provincial, Specialist and Subordinate Services—Ban on confirmation of officers on account of the formation of Orissa Province—Removed—Rule in G.O. No. 818, Public (Services), dated the 22nd May 1935, cancelled with effect from the 1st April 1936.

READ—the following papers :—

G.O. No. 818, Public (Services), dated the 22nd May 1935.

G.O. No. 599, Public (Services), dated the 25th March 1936.

Order—No. 1101, Public (Services), dated 19th June 1936.

The following notification will be published in the *Fort St. George Gazette* :—

NOTIFICATION

In exercise of the powers conferred by rules 38 to 41, 42 and 44 of the Civil Services (Classification, Control and Appeal) Rules, the Local Government are hereby pleased to cancel, with effect on and from the 1st April 1936, the rule published with Public (Services) Department Notification No. 422, dated the 22nd May 1935, at pages 788-789 of Part I of the *Fort St. George Gazette*, dated the 28th May 1935, as subsequently amended.

2. Heads of departments and departments of the Secretariat are requested to note that confirmation of officers in vacancies in existence on the 1st April 1936 and in those arising after that date in the several services and posts included in the schedules to the rule issued in G.O. No. 818, Public (Services), dated the 22nd May 1935, as subsequently amended, should be regulated in accordance with the rules and orders issued in G.O. No. 599, Public (Services), dated the 25th March 1936, i.e., such vacancies should first be utilized for the abolition of supernumerary posts in the respective cadres. When all the supernumerary posts have been abolished and the lien of permanent officers transferred to Orissa, has been transferred to the regular cadres, there will be no objection to the confirmation of officers in the remaining vacancies.

(By order of the Governor in Council)

H. M. HOOD,
Acting Chief Secretary.

To all Heads of Departments.
,, the Departments of the Secretariat (all sections).
,, the Accountant-General, Madras.
,, the Madras Public Service Commission (with C.L.).
,, the Superintendent, Government Press for publication of notification (paragraph 1 only).
,, the Chief Secretary to the Government of Orissa (with C.L.).

27

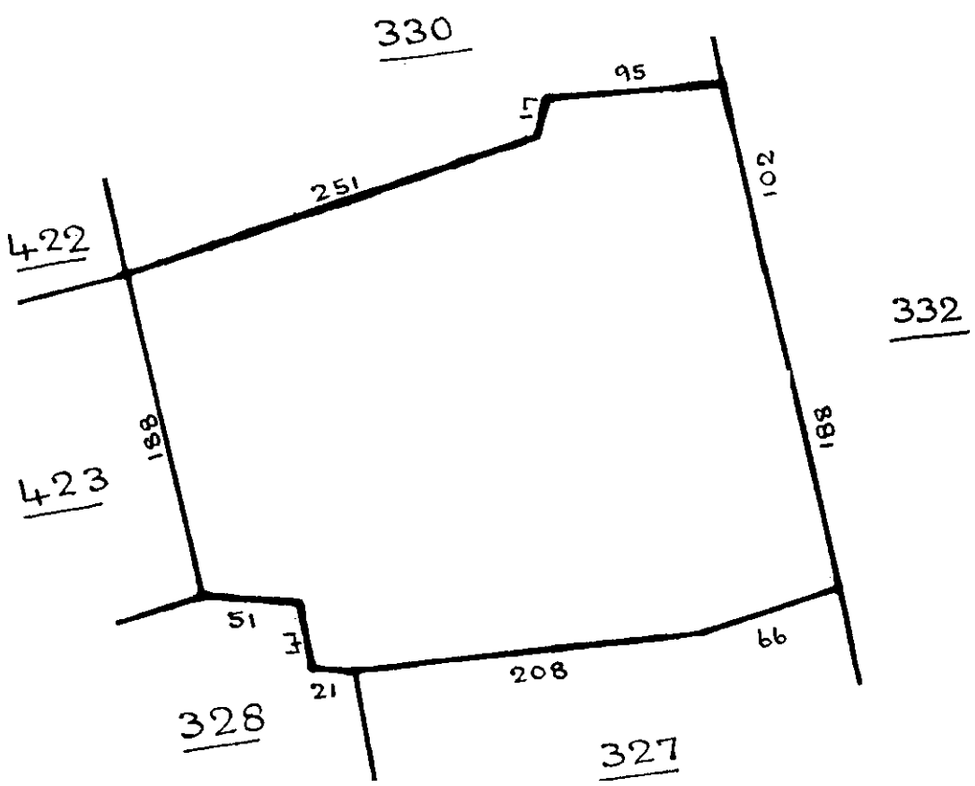
District - South Kanara

Taluk - Mangalore

Village { No. 101
Name Attavar

R.S. No. 329
T.S. No. 200

Area 0.92 Acres



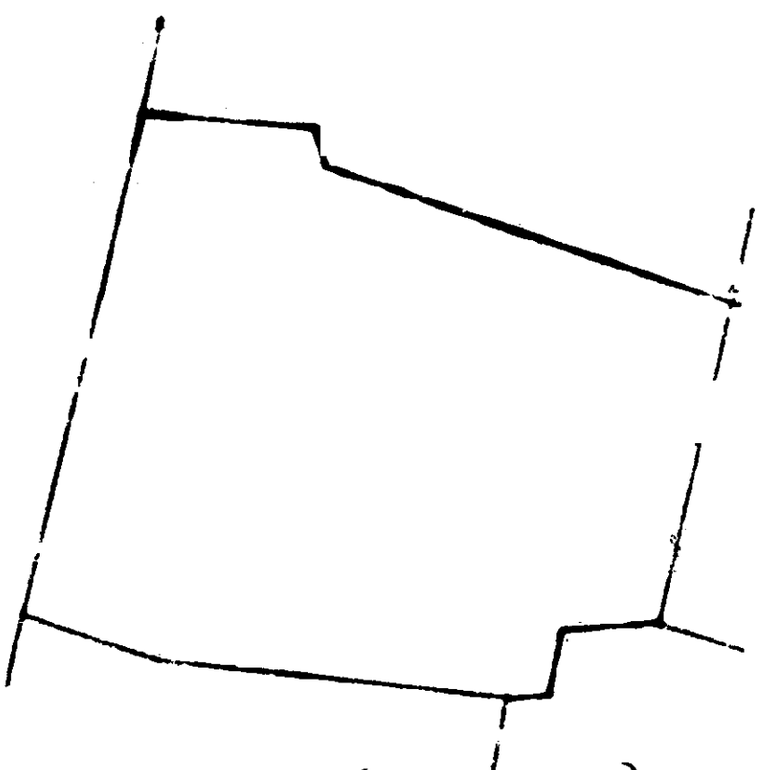
Scale 1 inch = 1 chain

True Tracing

Sd T. M. D'Sa
Rev. Inspector

Copied by [illegible]
Draftsman
12.6.43

28



(~~S.H.~~ (Mr F. W.S.)

Subs- original T Nangalore D.M's Court - 6 S.232/
ment - land (SW - Nangalore Tk & Town - Attavar vge
T.S. No. 207 - road Pavambore - claim of forward
ownership - V. B. Fernandez and another -
plaintiff Draft written statt approved
Mr H.L.J 6/11/8/43 — Q
Mr 21.22.3 B 2/43 — Q
Rec (Misc) 666. 9 18.6.43.

The Board approves the draft written statement ~~statement~~ submitted by the caller with his letter cited above. 2. W.S. 5 para 6 of this letter first cited above — the attention of the caller is invited to the notification appended to G.O. No. 830 L.A.D. of 18-1-43 and the last sentence of para 4 of G.O. No. 3866 L.A.D. of 11-4-40 (B.P.M. 5870 15-6-43 and B.P.M. 818 of 21-3-41) where it has been laid down that the ~~cost~~ shall be borne by the Govt & the local board in equal shares and that the pleader appointed by the caller on behalf of the Govt need alone appear for both the Govt & the M.C. ~~& he~~ is requested to take action accordingly.

18/6/43

L. 1118 | 43.

MH
J.S

SUITS NOTE FILE.

Subject: Suits. ... Mangalore. T.Ms. Road ... Mangalore ... T. ... Mangalore ... T. S. 207 - ... V. B. Fernandez & ... Ors.

1. Reference to sketch. ... C.F.

2. Date of hearing. 5-4-43.

3. Subject matter of the suit. ... a triangular ... land in T.S. 207 ... within the limits of the Mangalore Municipality, claimed as ... road ... They claim ... possession. They only sought the adjoining ... land ... lay the ... 1941. The ... against the ... as they ... at the instance of the Mpl. Council. ... of action against the latter ... asking them to ...

(attaching 12½ S.Pies ... which they have closed ... in private ... T.S.206 ... compound ...)

4. Cause of action. No Cause ... against the ... at the instance of the Mpl. Council. ...

5. Date of cause of action. 4-12-41 ... Mpl. Council ...

6. Date of issue of notice of suit by the plaintiff to the Collector. Notice not issued.

7. Result of the notice of suit. Does not arise.

8. Date of plaint. 20-6-42

9. When does the period of limitation expire. Note authority. No limitation as against the Mpl. Council. ... Limitation as against the Mpl. Council ... 4-12-41. Art 120 in the ... Schedule to the Indian Limitation Act.

10. Prayers in the plaint. (1) A declaration that the suit ... belongs to ... as ... tenure.

(2) A ... injunction restraining ... from interfering ... the suit ...

Legal ...

(3) Costs.

11. Valuation of the plaint. Rs. 150.

12. Local C.P's opinion. [illegible]

13. Has the Local G.P. scrutinised the draft written statement. [illegible]

14. Collector's recommendation. [illegible]

1. If possible, whether the draft written statement is in order and state the main allegation in the plaint.

[illegible]

5. Irregularity in procedure. No notice of suit [illegible] Sec. 80 C.P.C.

[illegible] official capacity. The plffs. claim of title either by document or by adverse possession is equally untenable as the document is of very recent date viz. 1941 and there can be no adverse possession in the life formed part of T.S. No. 207 which has been measured at town survey as road puramboke. In such a case there is no copy of the document (sale deed) to see what the boundary description is or how far it extends to the east. But as the town survey is conclusive so far as the present occupation goes, the suit must be defended. The defence may be sanctioned and the d. w. s. as below which should be submitted for the Collr's. d. w. s., which is found wanting

may be approved.

Draft Written Statement

(1) This defendant does not admit the truth of the allegations in the plaint save those that are specifically admitted herein and puts the pltffs. to strict proof of the same. The sketch attached to the plaint is incorrect; a correct sketch is filed herewith (1A).

(2) This defendant admits that the pltffs are the owners of T.S. no. 200 (old S. no. 349) of Thavar vge. but contends that they have no right to any portion of T.S. no. 207, read for, the Suit Site which they have enclosed with T.S. no. 200 by a Compound wall. They have no right, title or interest in the Suit land and the title to which vests in this defendant and the Council and management of which vests in the 1st defendant, the Municipal Council. The pltffs' claim (para 10) either by document or by adverse possession is invalid.

(3) This defendant submits that the first defendant, the Municipal Council, since vesting its rights in the action it took to remove the encr. the pltffs have no right to question its actions.

(4) This defendant denies that the sale-deed of the pltffs covers the Suit Site also. He submits that the Survey Stone S2 is now out of position and that it should be moved to its correct position which is 6' to the west of its present position.

(5) This defendant submits that at the time Survey the Suit Site has been measured with T.S. no. 207 which is road for. and this is conclusive proof that at the time of Survey it did not form part of any private property.

(6) This defendant denies that the trees referred to in para III (1) of the plaint were on the Suit Site. They were on pltffs' land to the west of the Suit Site.

(7) The Suit is not maintainable as the pltffs have not given this defendant any

suit notice of suit as required by Sec. 80 C.P.C.

(8) The Plffs. have no Cause of action as against this defendant.

(9) The Plffs. are not entitled to the declaration or the injunction prayed for.

(10) This defendant prays that the suit as against him may be dismissed with costs.

All the paras in the W.S. above excepting para (7) need no explanation as they have all been based on the authority of the Municipal Council. The G.P.'s opinion as regards the absence of notice under Sec. 80 C.P.C. does not seem to be correct as the notice is mandatory. Many Courts have granted the Plffs time to give notice to the Govt. before dismissing them. This is a plea that must be taken and hence it has been put in.

A - Before the defence is sanctioned, we want to know -

(1) That the price of ground has any value -

(2) That the averments about survey have been properly verified. The Collr does not say what the Talukdar did to check the measurements or how the survey stone got 6' out of position

RG 30/3

To DDS - M.I would like to know what survey was made & whether it is a binding survey on which we can rely in a court. Will you see what information we have?

RG 31/3 DDS

The locality was surveyed under the block map system in 1894. Mangalore town was surveyed under the town survey system in 1906. No land complaint files were received in C.O. for

Cm 29/3/43 30/3/43

Mangalore Town. - according to recent decisions of the High Court, the survey can not be enforced -

No records with measurements are available in C.O., records having been sent to Salem for safe custody.

C.G. 1.4.03

Submitted to M 2. DDS has certain observations which I have asked him to make in person, so that member may make comments before I send this up to M.1.

V.S. RG 9/4

I see the Survey is not accepted as conclusive evidence in the Court - the trouble is the same now as it always was.

—

This is no longer my paper - but it may be helpful if I point out one or two things.

About 1924 I examined the survey in Sirsi from the point of view of the necessity or otherwise of a new survey. I remember now that in Udupi for instance (possibly in other taluks but I forget) the measurements of a field recorded in the block may often differ from the measurements of the same field recorded in the F.R.B.

—

In the record here the measurement of the southern side of the field RS 329 as given in the sketch sent by the plaintiff is 188 links as against 181 links in the sketch sent by the defendant

—

This needs to be reconciled. In Mangalore Town it may be that measurements according to the Town Survey differ from those in the

The facts should be made clear

I fear that in the end though the decision of the suit will depend

the evidence procurable as to actual Enjoyment

For order on A. p 2 NF. 1/4/43 JS.

RL 1/4

A is approved.

If Court ... bought as to the record of certainty is entitled to have the prescribed time for granting no case. Incidentally the time is 2 months not 1 as stated by the Hon Dist Judge/Taluq he actually allowed 2 months and 11 days so he is probably not objecting to adequate time. If we get adequate time we need not take steps upon notice under O 20 C.P.C. Court Commissioner to expedite this enquiry & obtain the necessary adjustment, verifying the Boundaries figures.

JS.

Draft Issued.

RL 3/4

From the Collr of S. Kanara Ref No. A.D.9022/4209 12.6.43 MN 21422

Log S.

The C

refers at Mr

the measurements of the Southern side of the field R.S. No. 329 according to the old survey does not differ from that according to the Town Survey and that the Sketch produced by the plaintiff is ~~only~~ in accordance with the actual state on the ground.

A copy of the sketch of the said field according to the old survey will be found at p 27 of. The draft written statement may be approved

I
p 23 of

In para 6 of his letter dated 20-3-4 the Collr states that the costs of defending the suit has to be apportioned between the Govt and the municipality in the proportion of 1:2 if the Municipality accepts the legal representative appointed by the Govt and that it may be better that the Vakil for the Municipality who has already been on record continues to appear for the Municipality and the G. P. only for the Govt. In this connection reference is requested to the noting appended by G.O. No. 830 L.A. Dt 18.1

and the last sentence of para 4 of G.O.
No. 3868 L.A.D of 7-11-40 where it has been laid down that the cost shall be borne by the Govt. and the local board in equal shares and that the pleader appointed by the Collr on behalf of the Govt. need alone appear for both the Govt. and the Municipal Council. The attention of the Collr may be limited to these provisions in this G.O. and instructed to take action accordingly.

9.7.43 M 1776 I + II may be a/s/d.

The 9/7/43

Encl x on p. 6 N.F.

17 JUL 1943

9/7 M-1 1776

LA S (L.R.)

Draft submitted at page 8.

D 7.7.43 M 1776

The 9/7/43

A.S.W.